

Remarks

This is in response to the second non-final Office Action mailed February 22, 2005.

On May 11, 2005, a telephonic Examiner's Interview was held between the Examiner and the Applicant's Attorney. The Attorney wishes to thank the Examiner for her courtesy and professionalism during the interview.

During the course of the interview, the Attorney presented the overall advantages of the claimed invention over the prior art, and the Attorney and Examiner discussed a number of references of record including Markey '371, Gregory '761 and Waugh '045. One area of discussion was the manner in which the cover plate is supported over the roof in Markey '371. Another area of discussion was the operational disadvantages of prior art latch features shown in various references such as Markey '371, and the absence of such latch features in Gregory '761 and Waugh '045.

The Attorney also proposed certain amendments to the application, including amendments to the claims to further distinguish over the art of record as well as amendments to the drawings and specification to make more explicit that which was inherent from the originally filed application. These amendments are believed to place the application in proper condition for reconsideration and allowance.

The amendments above are accordingly directed to the drawings, specification and claims. The drawings have been amended to add reference numerals 214, 216 and 218 to FIGS. 22 and 23 to numerically identify various latching features shown therein when the case was originally filed.

The specification has been amended to insert an additional paragraph at page 9, line 7 to set forth that which would have been inherently understood by one skilled in the art with regard

to such latching features in FIGS. 22 and 23. The Applicant respectfully submits that these amendments to the drawings and specification are proper, do not introduce new matter, and will not present an undue burden upon the Examiner.

The amendments to the claims include the canceling of withdrawn claims 10, 14 and 24 without prejudice, modifications to the language of claims 1-4, 18-19, 22 and 25, and the addition of new claims 26-33. Claim 1 has generally been amended to more clearly set forth the recited climate conditioning unit as being supported by *a top surface of* the housing.

Independent claim 1 has further been generally amended to additionally feature *a fastener inserted through a flange* to attach the climate conditioning unit to the housing. Support for these amendments is found including in FIG. 8. Dependent claims 2-4 have been amended to better conform to the new language of claim 1.

Independent claim 18 has been generally amended so that the recited means plus function element, now identified as a “first means” for convenience, is described as being supported by a top surface of the housing. The Applicant submits that this amendment does not serve to convert the claim into a non-means plus function format. Dependent claim 19 has been generally amended to further recite the means plus function element introduced therein (now “second means”) as additionally functioning to impede initiation of said pivotal movement in said opposing first and second directions. It will be clear that this additional functional language corresponds to the above described latching features 214, 216 and 218 of FIGS. 22 and 23.

Similarly, independent claim 22 has been generally amended to add additional language directed to interference latches that operate to impede initiation of said rotation, and independent claim 23 has been generally amended to correspond to the above described “first means” and “second means” of claims 18 and 19.

With regard to the newly added claims 26-33, new dependent claim 26 depends from claim 1 and further features the fastener as extending into a non-through hole in the housing, as exemplified in FIG. 8. New claim 27 depends from claim 1 and further adds a second climate conditioning unit that can be interchangeably installed in lieu of the first climate conditioning unit. New claim 28 depends from claim 27 and further characterizes the first climate conditioning unit as comprising a radiant heat source, and the second climate conditioning unit as not comprising such a heat source. Support for these latter two claims is found including in the specification at page 5, lines 13-19, page 7, lines 2-5, and page 8, lines 1-2. Upon allowance, the Applicant requests that presently numbered claims 26-28 be moved up so as to be grouped with the claim set of claim 1.

New independent claim 29 features a modular animal enclosure with first and second climate conditioning units that are alternately installable on the housing, with the first unit characterized as a heating unit and the second unit characterized as a cooling unit. Support is found including in the specification at page 5, lines 13-19, page 7, lines 2-5, and page 8, lines 1-2. New dependent claim 30 depends from claim 29 and features a fastener configured to extend through a flange to secure the first climate conditioning unit to the housing, the fastener further configured to alternatively extend through a flange to secure the second climate conditioning unit to the housing. Support is found including by fastener 118 in FIGS. 4 and 11.

Finally, new independent claim 31 is a picture claim generally exemplified by the embodiment of FIGS. 22 and 23 and features various flange portions that cooperate impede initiation of rotation in the respective first and second directions. New dependent claims 32 and 33 further characterize the embodiment exemplified in FIGS. 22 and 23.

It is respectfully submitted that these claim amendments are proper, do not introduce new matter, will not place an undue burden upon the Examiner including necessitating significant additional consideration or searching, and serve to place the application in proper condition for reconsideration and allowance.

Rejection of Claims Under 35 U.S.C. §102

Claims 1, 2, 5, 6, 9, 13, 15, 16, 18 and 21 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,551,371 to Markey et al. (“Markey ‘371”). This rejection is respectfully traversed.

As discussed during the Interview, the Applicant submits that Markey ‘371 fails to disclose a climate conditioning unit that is supported by a top surface of the housing to form a gap, as generally recited by amended claim 1. Rather, as best viewed in FIGS. 1 and 6 of Markey ‘371, the reference discloses a cover assembly 86 comprising a cover plate 88 with four downwardly depending posts 98. These posts 98 are inserted through corresponding apertures 100 in roof 14.

After insertion of the posts 98 into the apertures 100, an interior guard plate 90 is attached to the posts 98 using four respective fasteners 104 as shown in FIG. 1 (note: Markey ‘371 also uses “104” to identify the pad – this is apparently a mistake). The posts 98 are sized to contactingly slide through the apertures 100, allowing the cover assembly 86 to be raised or lowered as desired. Guards 102 act as a limit stop to limit the extent to which the cover assembly 86 can be raised. See Markey ‘371, col. 3, lines 14-34; col. 3, lines 46-48.

Based on the description provided by Markey ‘371, the Applicant submits that one skilled in the art would inherently conclude that the posts 98 and the apertures 100 are sized to provide a

sufficiently tight fit such that frictional forces therebetween are sufficient to maintain the cover assembly 86 in the open (raised) position. Otherwise, the cover assembly 86 would simply fall to the closed position, preventing air flow into the enclosure. See e.g., col. 3, lines 35-46.

Accordingly, Markey '371 fails to disclose the cover assembly as being supported by a top surface of the top portion, as recited by claim 1. Reconsideration and withdrawal of the rejection are respectfully requested on this basis.

Additionally, based on the foregoing description of Markey '371, it is clear that the reference further fails to disclose a fastener inserted through a flange to attach the climate conditioning unit to the housing. This advantageously facilitates ease of removal of the climate conditioning unit from the housing (see e.g., specification, page 8, lines 15-18. Reconsideration and withdrawal of the rejection of claim 1 are thus requested on this basis as well.

Reconsideration and withdrawal of the rejection of the claims depending from claim 1 are requested on the basis that these claims depend from a claim believed to be patentable for the foregoing reasons.

With regard to independent claim 18, the Applicant submits that the recited “first means *supported by a top surface of the housing* for facilitating said flow of atmospheric air through the climate conditioning aperture” is not disclosed by Markey '371. As discussed above, Markey '371 does not support the cover assembly 86 by a top surface of the housing and, at the same time, facilitate a flow of air into the interior of the housing. Accordingly, reconsideration and withdrawal of the rejection of claim 18, as well as for dependent claim 21, are also respectfully requested.

Rejection of Claims Under 35 U.S.C. §103

Claims 3 and 4 were rejected under 35 U.S.C. §103(a) as being obvious over Markey '371 in view of U.S. Patent No. 2,689,906 to Corbett ("Corbett '906"). Claims 7 and 8 were rejected under §103(a) as being obvious over Markey '371 in view of U.S. Patent No. 3,160,139 issued to Wales Jr. ("Wales '139"). Claims 11, 12, 17 and 20 were rejected under §103(a) as being obvious over Markey '371, and claims 17 and 20 were further rejected under §103(a) as being obvious over Markey '371 in view of U.S. Patent No. 5,868,101 issued to Marshall ("Marshall '101").

These rejections are respectfully traversed on the basis that these claims depend from a patentable base claim, as well as on the basis that these various references fail to make up for the deficiencies of Markey '371 with regard to the respective subject matter recited therein.

Reconsideration and withdrawal of these rejections are therefore respectfully solicited.

Claims 19 and 25 were rejected under 35 U.S.C. §103(a) as being obvious over Markey '371 in view of U.S. Patent No. 3,710,761 to Gregory ("Gregory '761") and U.S. Patent No. 2,010,045 to Waugh ("Waugh '045"). This rejection is respectfully traversed.

The deficiencies of Markey '371 have been discussed above and are applicable here as well with regard to the recited "first means" of these claims, and the claims thus define patentable subject matter over these references on this basis.

In addition, Gregory '761, alone or in combination with Waugh '045, fail to teach or suggest the additional limitations directed to the interference latches that impede initiation of rotation of the top portion with the base portion, as now added to the respective claims 19 and

25. Indeed, Gregory '761 and Waugh '045 appear to be silent with regard to such interference latches.

The Applicant notes that Markey '371 does provide hinge pins 40 that are engaged by hinge hooks 76 to permit initial movement of the roof 14 onto the base 12 during installation. Locking tabs 74 are similarly arrayed about the perimeter of the roof 14 to engage apertures 46 of the base 12 to securely lock the roof 14 onto the base 12. Nevertheless, this does not serve to make up for the deficiencies with regard to the lack of correspondence to the recited first means in these claims.

Additionally, it is noted that the pins 40 in Markey '371 are integrally formed (and hence, not alternatively moveable) with the roof 14, thus not meeting the limitations of the "second means" as well, which requires a removable hinge pin that can be alternatively placed on opposing sides of the housing. Accordingly, reconsideration and withdrawal of the rejection of claims 19 and 25 are requested on these bases as well.

Claims 22 and 23 were rejected under §103(a) as being obvious over Gregory '761 in view of Waugh '045. This rejection is respectfully traversed.

As noted above, Gregory '761 and Waugh '045 are both silent with regard to teaching or suggesting the respective flanges now featured by claims 22 and 23 to impede initiation of said rotation in the respective first and second directions. The Applicant submits that the remaining art of record, including Markey '371, further fail to make up for the deficiencies of these references, and that one skilled in the art would not be motivated to arrive at the claimed combination from these references. Accordingly, reconsideration and withdrawal of the rejection of claims 22 and 23 are respectfully solicited.

New Claims 26-33

Pursuant to 37 CFR 1.111, the Applicant submits that newly added claims 26-33 also define subject matter that is patentable over the prior art of record. Per claim 26, the extension of the recited fastener into a non-through hole in the housing does not appear to be disclosed, taught or suggested by Markey '371 or the other art of record.

The inclusion of multiple, interchangeable climate conditioning units in claim 27 also does not appear to be disclosed, taught or suggested by Markey '371 or the other art of record; Markey '371 does present alternative embodiments in FIGS. 6 and 7 therein, but it does not appear that the reference contemplates providing both to the consumer to allow the consumer to elect which one to install as desired.

Similarly, at least Markey '371 is silent with regard to providing a heating unit and a cooling unit pursuant to new claim 28, and instead provides two cooling units in the respective embodiments of FIGS. 6 and 7 of Markey '371. Thus, new dependent claims 26-28 are believed to define patentable subject matter on the basis that the combinations arising from these additional limitations are not taught or suggested by the art of record, as well as on the basis that these claims depend from a base claim (claim 1) believed to be patentable for the foregoing reasons.

Similarly, the modular animal enclosure of new independent claim 29 with first and second climate conditioning units that are alternately installable on the housing, with the first unit characterized as a heating unit and the second unit characterized as a cooling unit, does not appear to be disclosed, taught or suggested by Markey '371 or the other art of record. The use of the same fastener in claim 30 to alternately secure the first climate conditioning unit and the

second climate conditioning unit also appears to not be disclosed, taught or suggested by Markey '371 or the other art of record.


New independent claim 31 is a picture claim that generally features the subject matter of claim 22, and hence is believed to be patentable over the prior art for the reasons set forth above. New dependent claims 32 and 33 add additional limitations that do not appear to be met by the prior art of record as well, and are believed to be patentable on the basis that these claims depend from a patentable base claim.

Conclusion

This is intended to be a complete response to the second non-final Office Action mailed February 22, 2005. Reconsideration and allowance of all of the claims in the application are respectfully requested.

Should any questions arise concerning this response, the Examiner is invited to contact the below signed Attorney.

Respectfully Submitted,

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Amendments to the Drawings

The attached sheet of drawings includes changes to FIGS. 22 and 23. This sheet, which includes the addition of reference numerals 214, 216 and 218 to FIGS. 22 and 23 replaces the original drawing sheet 11/11.

Attachment: Annotated Sheet Showing Changes

Replacement Sheet

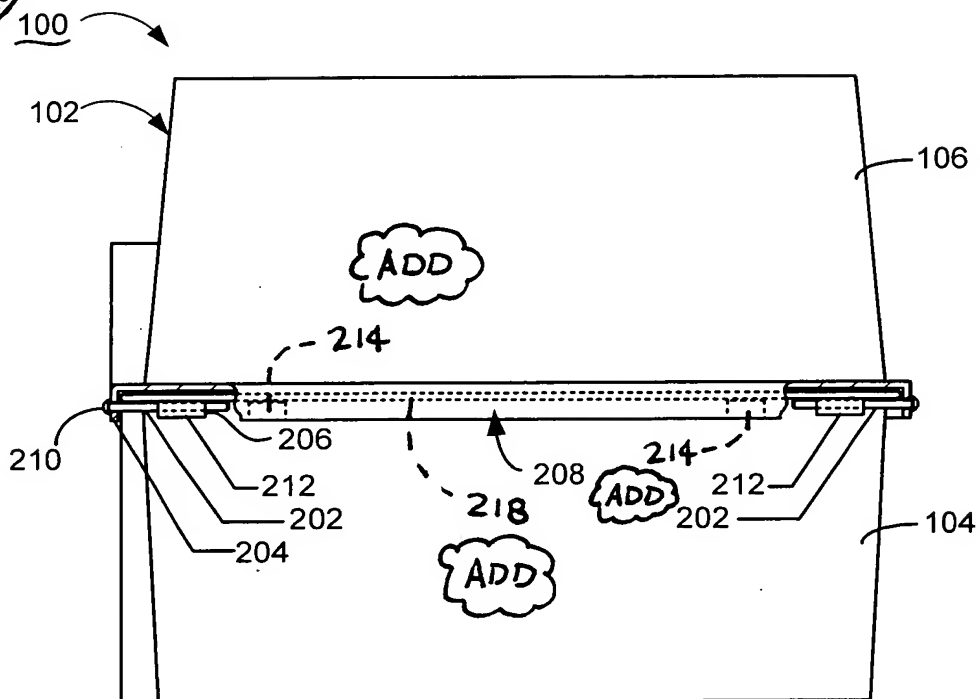


FIG. 22

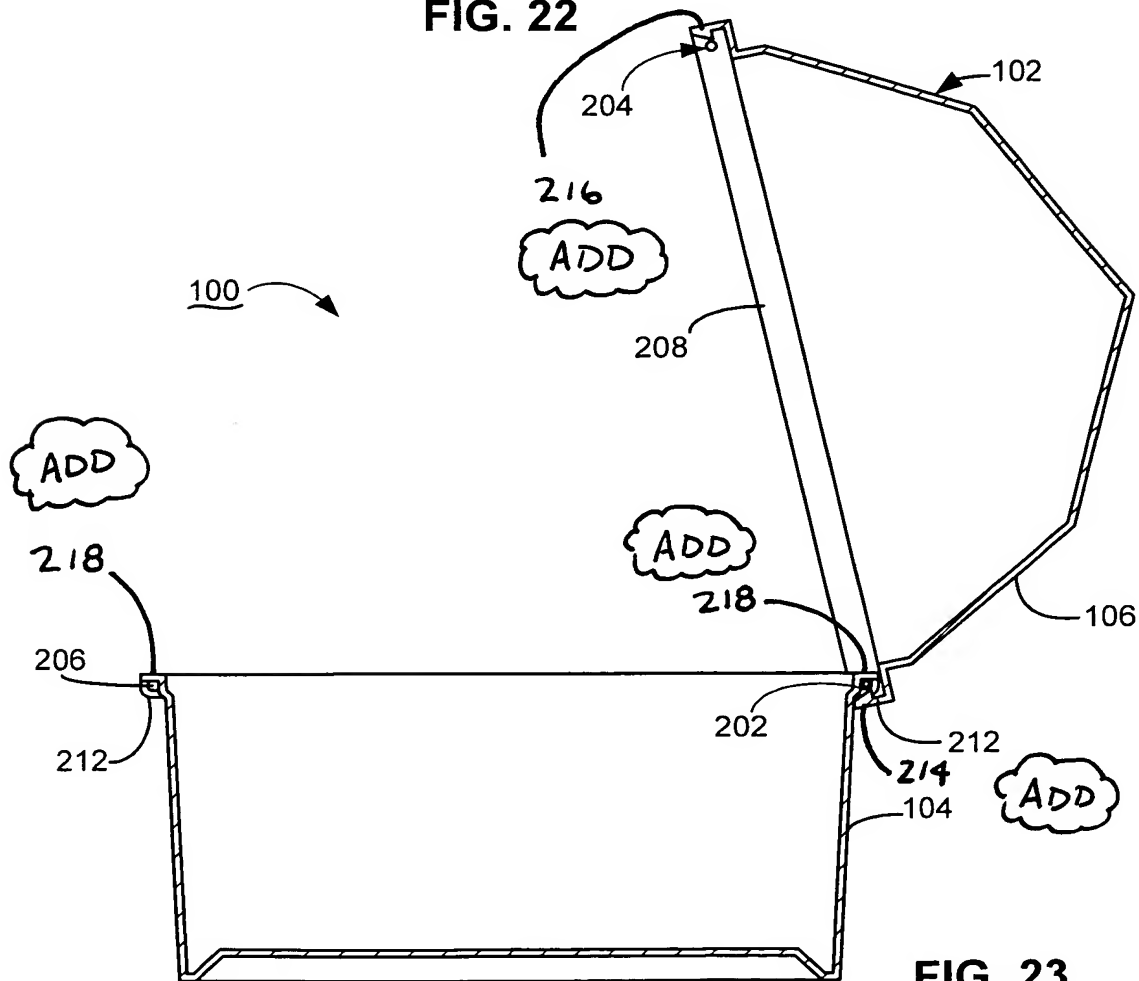


FIG. 23